



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

Physical Address: 4411 Early Road, Harrisonburg, VA

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO NELSON COUNTY SERVICE AUTHORITY FOR WINTERGREEN MOUNTAIN WWTP VPDES Permit No. VA0031011

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Nelson County Service Authority regarding the Wintergreen Mountain WWTP for the purpose of resolving certain violations of the State Water Control Law, Regulations, and the applicable permit.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the Wintergreen Mountain WWTP located at 143 Headwaters Drive, Wintergreen, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of NCSA.
10. "NCSA" means Nelson County Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* NCSA is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "O&M" means operations and maintenance.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES Permit No. VA0031011, which was issued under the State Water Control Law and the Regulation to NCSA on January 1, 2019 and which expires on December 31, 2023.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. NCSA owns and operates the wastewater treatment Facility. NCSA is subject to the Permit which was issued on January 1, 2019 and expires on December 31, 2023. The 2017 and 2018 violations were subject to the Permit which was issued on January 1, 2014 and expired on December 31, 2018.
2. South Fork of the Rockfish River is located in the Middle James River Basin. South Fork of the Rockfish River is listed in DEQ's 303(d) report as impaired for E-coli, attributed to non-point source agriculture and wildlife.

3. On February 16, 2018, DEQ issued Warning Letter No. W2018-02-V-1035 to NCSA for a December 2017 E. coli violation. NCSA reported >4 N/CML on its DMR and the Permit requirement was 126 N/CML.
4. On February 27, 2018, DEQ staff performed a Compliance Inspection of the Facility. As a result of the inspection, DEQ requested that NCSA perform maintenance at the Facility, including repair of rusting treatment components.
5. On March 20, 2018, DEQ issued Warning Letter No. W2018-03-V-1002 to NCSA for the following effluent violations:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement *
January 2018	001	120-E. coli	Concentration Average	>772 n/CML **	126 n/CML
January 2018	001	310-CBOD ₅	Quantity Average	23.87 kg/D	14 kg/D
January 2018	001	310-CBOD ₅	Quantity Maximum	46.93 kg/D	20 kg/D
January 2018	001	310-CBOD ₅	Concentration Average	32.86 mg/L	12 mg/L
January 2018	001	310-CBOD ₅	Concentration Maximum	75.67 mg/L	18 mg/L
January 2018	001	313-Ammonia, as N Dec-May	Concentration Average	17.85 mg/L	6.9 mg/L
January 2018	001	313-Ammonia, as N Dec-May	Concentration Maximum	32.7 mg/L	9.3 mg/L

6. On April 17, 2018, DEQ issued Warning Letter No. W2018-04-V-1002 to NCSA for the following effluent violations:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement *
February 2018	001	120-E. coli	Concentration Average	>67 n/CML **	126 n/CML
February 2018	001	310-CBOD ₅	Quantity Maximum	28.24 kg/D	20 kg/D
February 2018	001	310-CBOD ₅	Concentration Average	15.58 mg/L	12 mg/L
February 2018	001	310-CBOD ₅	Concentration Maximum	20.66 mg/L	18 mg/L
February 2018	001	313-Ammonia, as N Dec-May	Concentration Maximum	9.97 mg/L	9.3 mg/L

7. On May 4, 2018, DEQ staff met with NCSA staff, and their consultant to discuss the Facility's condition and to review DEQ's observations from the February 27, 2018 inspection. NCSA discussed potential upgrades to the Facility, including an additional equalization basin, upgrade of the manual bar screen to a mechanical screen, and the replacement of blowers in the existing equalization basin. DEQ requested additional maintenance of the Facility due to its age, having been constructed originally in 1973, and as a result of on-going effluent violations. In a follow up meeting on August 14, 2018, DEQ staff met with NCSA staff and their consultant and discussed the potential for major Facility upgrades, and potential Consent Order for interim limits during construction, and a timeline for completion of upgrades.

8. On December 7, 2018, DEQ issued NCSA Warning Letter No. W2018-12-V-1046 for the following effluent violations:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement *
June 2018	001	004-TSS	Concentration Average	13 mg/L	10 mg/L
September 2018	001	309-CBOD ₅ Jun-Nov	Quantity Maximum	<32.36 kg/D	10 kg/D
September 2018	001	309-CBOD ₅ Jun-Nov	Quantity Average	<9.78 kg/D	7 kg/D
September 2018	001	309-CBOD ₅ Jun-Nov	Concentration Average	<4.75 kg/D	6 kg/D
September 2018	001	309-CBOD ₅ Jun-Nov	Concentration Maximum	<11.67 mg/L	9 mg/L

9. On March 18, 2019, DEQ issued Warning Letter No. W2019-03-V-1007 to NCSA for the following effluent violations:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement *
January 2019	001	004-TSS	Concentration Average	16.6 mg/L	10 mg/L
January 2019	001	004-TSS	Quantity Average	16.8 kg/D	11 kg/D
January 2019	001	310-CBOD ₅ Dec-May	Quantity Maximum	30.53 kg/D	20 kg/D
January 2019	001	310-CBOD ₅ Dec-May	Quantity Average	15.11 kg/D	14 kg/D
January 2019	001	310-CBOD ₅ Jun-Nov	Concentration Average	12.39 kg/D	12 mg/L
January 2019	001	120-E. coli	Concentration Average	>39 n/CML	126 n/CML
January 2019	001	137-Hardness, Tot. as CaCO ₃	Concentration Minimum	87 mg/L	120 mg/L

10. On April 15, 2019, DEQ issued Warning Letter No. W2019-04-V-1005 to NCSA for the following effluent violations:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement *
February 2019	001	004-TSS	Concentration Average	11.3 mg/L	10 mg/L
February 2019	001	004-TSS	Concentration Maximum	23.67 mg/L	15 mg/L

11. On May 1, 2019, NCSA submitted a Plan of Action for upgrading the Facility, including the replacement of major components of the treatment unit, and a schedule for implementation which has been incorporated into the Appendix of the Consent Order.

12. Va. Code § 62.1-44.5 states that: “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses...”

13. Permit Part I.A.1 prohibits discharges that exceed Permit effluent limitations.

14. Permit Part II.F states that: "Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses."
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
16. The Department has issued no permits or certificates to NCSA for this Facility other than VPDES Permit No. VA0031011.
17. The South Fork of the Rockfish River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
18. Based on the results of the February 16, 2018 inspection and the May 4, 2018 meeting, the Board concludes that NCSA has violated the Permit and Va. Code 62.1-44.5 by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3)- C(14) above.
19. In order for NCSA to return to compliance, DEQ staff and representatives of NCSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders NCSA, and NCSA agrees to perform the actions described in Appendices A and B of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of NCSA for good cause shown by NCSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in WL No. W2018-04-V-1002 dated April 17, 2018, WL No. W2018-12-V-1046 dated December 7, 2018, WL No. W2019-03-V-1007 dated March 18, 2019, and WL No. W2019-04-V-1005 dated April 15, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, NCSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NCSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NCSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by NCSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NCSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. NCSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NCSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert

will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NCSA. Nevertheless, NCSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after NCSA has completed all of the requirements of the Order;
 - b. NCSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NCSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NCSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NCSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NCSA certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind NCSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NCSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NCSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

Amy T. Owens, Regional Director
Department of Environmental Quality

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Nelson County Service Authority voluntarily agrees to the issuance of this Order.

Date: August 20, 2019 By: George T. Miller, Jr., Executive Director
(Person) (Title)
Nelson County Service Authority

Commonwealth of Virginia
City/County of Nelson

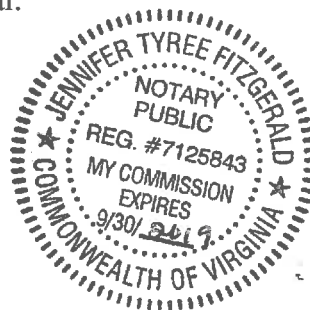
The foregoing document was signed and acknowledged before me this 20th day of August, 2019, by George T. Miller, Jr. who is Executive Director of Nelson County Service Authority on behalf of the Authority.

J. Tyree Fitzgerald
Notary Public

7125843
Registration No.

My commission expires: 9/30/2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Plant Upgrades:

NCSA plans to upgrade the existing treatment plant (Plant) at the Facility.

1. By October 1, 2019, NCSA shall secure funding to construct upgrades to the Facility.
2. By January 1, 2021, NCSA shall advertise for bids for the Facility upgrade.
3. By, December 1, 2021, NCSA shall submit to DEQ a Certificate to Construct (“CTC”) application for review and approval.
4. By May 1, 2023, NCSA shall complete construction of the Plant upgrade, obtain a Certification to Operate (“CTO”), and update the Facility’s O&M Manual to incorporate operation and maintenance procedures for the new treatment unit(s).

General Requirements

5. NCSA shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2019**. Subsequent progress reports will be due **January 10, April 10, July 10, and October 10**, along with the Facility’s Discharge Monitoring Report, until the cancellation of this Order. The quarterly progress reports shall contain:
 - a. A summary of all work completed since the previous progress report in accordance with this Order;
 - b. A projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
 - c. A statement regarding any anticipated problems in complying with this Order.
6. No later than **14 days** following a date identified in the above schedule of compliance, NCSA shall submit to DEQ’s Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.
7. **DEQ Contact**

NCSA shall submit all requirements of Appendix A of this Order to:

Tiffany R. Severs
Enforcement Team Leader

VA DEQ, Valley Regional Office
4411 Early Road, Harrisonburg, Virginia
540-574-7859
540-574-7878
tiffany.severs@deq.virginia.gov

APPENDIX B INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than May 1, 2023, NCSA shall monitor and limit the discharge from Outfall No. 001 of the Wintergreen Mountain WWTP in accordance with VPDES Permit Number VA0031011, except as specified below.

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>					<u>MONITORING REQUIREMENTS</u>		
	<u>Monthly Average</u>		<u>Weekly Average</u>		<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Ammonia-N (Dec-May)	7.3 mg/L		12 mg/L		NA	NA	3/Week	8 HC
CBOD ₅ (Dec-May)	16 mg/L	16 kg/d	45 mg/L	44 kg/d	NA	NA	3/Week	8 HC

NA = Not Applicable

8 HC = 8-Hour Composite

3/Week = 3 samples taken during the calendar week, no less than 48 hours apart